

**Congress of the United States**  
**Washington, DC 20515**

June 12, 2009

Dr. Jane Lubchenco  
Undersecretary for Oceans and Atmosphere and NOAA Administrator  
United States Department of Commerce  
Herbert Clark Hoover Building  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Dear Dr. Lubchenco,

We are writing to you regarding the federally mandated observer program and the negative economic impact for both scallop vessel owners and fishermen who must pay for observers following the implementation of Amendment 13 to the Atlantic Scallop fishery management plan (Scallop FMP). While the government pays for observer coverage in most U.S. fisheries, including all East Coast fisheries except the scallop fishery, scallopers have been forced to shoulder an unfair burden that should be the responsibility of the National Marine Fisheries Service (NMFS).

In 1999, when NMFS allowed scallop fishermen to re-gain strictly controlled, periodic access to certain parts of the Georges Bank Groundfish Closed Areas, scallop industry representatives proposed to defray the costs of observers for this special and innovative area access program because of concerns about the potential for high groundfish bycatch. While this agreement was initially beneficial to both industry and the government, on June 23, 2004, NMFS in Scallop FMP Amendment 10 mandated that the industry pay for observers in open fishing grounds as well as all scallop access areas. Scallop FMP Amendment 13, finalized on June 12, 2007, established a permanent program for mandatory industry funded observers in all parts of the scallop fishery that implements the Amendment 10 directive.

Observers cost scallop vessels approximately \$775 per day. In open areas where compensation is awarded in "days at sea," the catch limit is not always met and vessels are often left without appropriate compensation. In fact, the cost of the extra food for an observer and fuel consumption often needed to catch the amount of scallops necessary to pay for this coverage makes this program financially impracticable. We also have concerns that the fee charged for observers is excessive compared to what they are actually paid. Some industry representatives have taken issue with the fact that NMFS contracts with only two providers for observer services which has limited competitive pricing for this service.


In scallop access areas, NMFS allows vessels to harvest 400 pounds per day over the access area catch limit to help offset this cost. However, the 2009 observer set-aside total allowable catch for the Elephant Trunk Access Area (ETAA) was fully utilized by May 5, 2009, and thus well before February 28, 2010, when all ETAA trips allocated for the 2009 scallop fishing year must be taken. Accordingly, those vessels taking access trips to

that area after May 5<sup>th</sup> are being forced to pay for an observer without benefit of any additional scallops. Additionally, we have been told that Council staff is recommending a 200 lb. compensation possession limit for the Closed Area II access area fishery that is set to open June 15<sup>th</sup>. This step should better ensure that observer funding for Closed Area II will last through the season, but it does not change our underlying concerns with regard to the unfair burden placed on scallopers by the current mandatory industry funded observer program.

Therefore, we ask your office to initiate the regulatory action necessary to restore Agency payment for the observer program for the Atlantic scallop fishery consistent with most U.S. fisheries. The high cost of this coverage coupled with the uncertainty of fair and equitable reimbursement has made this one more issue which has placed a strain on the relationship between industry and fishery managers and we urge you to follow through with this request.

Thank you for your consideration and we look forward to your response.

Sincerely,

Handwritten signature of Barney Frank in cursive script, underlined.

Barney Frank, M.C.

Handwritten signature of Walter B. Jones in cursive script, underlined.

Walter Jones, M.C.